

QJA/SP/MIRSD/MIRSD_DPIEA/23167/2022-23

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTION 12(3) OF SEBI ACT, 1992 AND REGULATION 27(5) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008.

In respect of –

Sr. No.	Name of the Noticee	Registration Number
1.	Kaynet Commodities Private Limited PAN: AADCM9892L	INZ000042538

1. The present matter emanates from a Show Cause Notice dated September 29, 2022 (hereinafter referred to as “**SCN**”) issued by the Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) to Kaynet Commodities Private Limited (hereinafter referred to as “**Noticee**”) under Regulation 27(1) of the SEBI (Intermediaries) Regulations, 2008 (hereinafter referred to as “**Intermediaries Regulations**”) calling upon it to show cause as to why the measures recommended by the Designated Authority (hereinafter referred to as “**DA**”) or any other action as contemplated in the Intermediaries Regulations, should not be taken against it. The SCN enclosed with it the Enquiry Report dated July 19, 2022 (hereinafter referred to as “**Enquiry Report**”) of the DA.
2. The Noticee is a member of Multi Commodity Exchange of India (hereinafter referred to as “**MCX**”) and is registered as a Stock Broker under the SEBI (Stock Brokers) Regulations, 1992 (hereinafter referred to as “**Stock Brokers Regulations**”) bearing SEBI Registration No. INZ000042538. I note that SEBI along with MCX had conducted a comprehensive joint inspection for the period April 01, 2018 to July 30, 2019 (hereinafter referred to as “**inspection period**”) of

the Noticee. Pursuant to completion of the said inspection, one of the action recommended with respect to the Noticee was to conduct Enquiry in view of MCX declaring the Noticee defaulter on November 09, 2020.

3. Considering the aforesaid recommendation in view of MCX declaring the Noticee as defaulter, SEBI appointed a DA under Regulation 24 of the Intermediaries Regulations to conduct an enquiry in the matter. The present Order is the result of such enquiry proceedings against the Noticee under Section 12(3) of the SEBI Act, 1992 read with Intermediaries Regulations. A Show Cause Notice dated May 12, 2022 was issued by the DA under the provisions of Regulation 25 of the Intermediaries Regulations, 2008 calling upon the Noticee to show cause as to why appropriate recommendation should not be made against it in terms of Section 12(3) of the SEBI Act read with Regulation 23 and Regulation 26 of the Intermediaries Regulations for the alleged violations. After considering the reply of the Noticee, the facts and circumstances of the case and material available on record, the DA vide its Enquiry Report, *inter alia*, made the following observations:

- a. *In this regard, while being Member of an Exchange is a pre-condition to apply for registration as Commodity Broker, the fact of being a Member of a Commodity Exchange does not entail automatic registration with SEBI. It is still mandatory for a Member to follow the procedure as laid down by Securities and Exchange Board of India (Stock Brokers) Regulations, 1992 (hereinafter referred to as "Stock Brokers Regulations") to operate as Commodity Broker. Likewise, termination of Membership by an Exchange does not automatically render the registration granted by SEBI cancelled and consequently taking the entity out of jurisdiction of SEBI. In fact, Regulation 27 (i) of Stock Broker Regulations, makes a stock Broker liable for actions such as suspension or cancellation under Intermediaries Regulations.*
- b. *Further, Chapter V of Intermediaries Regulations lays down the procedure of action in case of Default and Manner of Suspension or Cancellation of Certificate of any person who has been granted a certificate of registration under the Act or Regulations made thereunder. Therefore, it is very clear that unless the registration granted by SEBI is cancelled by SEBI, any intermediary who has been granted registration by SEBI remains within the regulatory purview of SEBI. Proceedings conducted by Exchanges or Depositories are distinct from the proceedings conducted by SEBI and so are the*

consequential actions. Cancellation of membership by MCX does not absolve the Noticee from the actions that can be taken by SEBI under Intermediaries Regulations. Accordingly, the contention of the Noticee that by virtue of MCX terminating its membership, the Noticee is out of regulatory purview of SEBI is not acceptable.

- c. It is a matter of record and admitted by the Noticee that the Membership of the Noticee has been terminated by MCX with effect from November 09, 2020. It is matter of record that it has been more than 2 years since the Noticee's Membership with MCX has been terminated. Furthermore, during the personal hearing the Noticee conceded that its Registration is liable to be cancelled. In this regard attention is drawn to Regulation 27 (i) and (ii) of Stock Brokers Regulations which reads as under
“Liability for action under the Securities and Exchange Board of India (Intermediaries) Regulations, 2008

27. A stock broker shall be liable for any action as specified in Chapter V of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 including suspension or cancellation of his certificate of registration as a stock broker, if he—

- (i) ceases to be a member of a stock exchange; or
(ii) has been declared defaulter by a stock exchange and not re-admitted as a member within a period of six months; or
....”

- d. Given the facts and circumstances of the matter, it is established that the Noticee ceased to be Member of Stock Exchange and has not been re-admitted as Member for more than six months consequently registration of the Noticee as Stock Broker is liable to be cancelled.

4. In view of the above, the Enquiry Report observed that the Noticee ceased to be Member of MCX with effect from November 09, 2020. Accordingly, the Enquiry Report has made the following recommendation:

“In view of the above observations, it is clear that the Noticee is no longer a member of any Stock Exchange, as a broker/ trading member. Therefore, in terms of Regulation 26 of the Intermediaries Regulations, it is recommended that the registration of the Noticee i.e., Kaynet Commodities Private Limited as Commodity Broker with Registration no. INZ000042538 may be cancelled.”

The Show Cause Notice, Personal Hearing and Reply of the Noticee

5. The SCN has been issued to the Noticee under Regulation 27(1) of the Intermediaries Regulations, in respect of enquiry conducted against the Noticee. The SCN was served upon the Noticee through speed post acknowledgement due and through email dated September 29, 2022. Noticee filed an undated reply to the SCN vide email dated November 15, 2022. The Noticee was granted an opportunity of personal hearing on December 20 2022. However, the Noticee vide email dated November 30, 2022 sought an adjournment and accordingly, another opportunity of personal hearing was granted to the Noticee on January 05, 2023. Mr. Sanjay Shah, Director and Designated Authority of the Noticee, appearing on behalf of the Noticee was heard on the scheduled day via videoconferencing and submitted that he will file written submissions within two days' time. I note that till date, no written submissions have been filed by the Noticee.
6. The Noticee, vide reply dated November 15, 2022 has, *inter alia*, made the following submissions:
 - a. *The Company further states with utmost respect to SEBI that no action can lie in furtherance of the alleged enquiry report dated 19.07.2022 stated to have been carried out with respect to the Company for the inspection period April 01, 2018 to July 30, 2019 inasmuch as the company has already been awarded the maximum punishment of termination from the membership by the MCX and hence any further proceedings by SEBI will tantamount to parallel proceedings and lead to multiplicity of proceedings and thus the principles of estoppels would apply as far as civil consequences of the alleged violations are concerned and that the doctrine of double jeopardy as enshrined in the constitution of India would operate against any provisions of prosecution as against the Company and as such the findings and observations as recorded in SEBI show cause notice and enquiry report under reply are rendered infructuous.*
 - b. *While the Company without prejudice to its claims and contentions reserves its rights to file further additional point to point reply to the said show cause notice issued by you in due course within three weeks here from and the*

company, most respectfully does hereby submit that in view of what is stated hereinabove the matter in issue are beyond the jurisdiction of SEBI and therefore, the above referred show cause notice dated 29th September 2022 having been rendered otiose and redundant the same may be withdrawn and the proceedings be terminated as such forthwith.

Consideration of submissions and findings

7. I have gone through the SCN, the Enquiry Report, reply of the Noticee and its submissions made before me during the hearing. I note that the allegation against the Noticee is that the membership of the Noticee with MCX has been terminated and the Noticee is no longer a member of any stock exchange and therefore, registration of the Noticee as Stock Broker is liable to be cancelled.
8. In this regard, the Noticee has submitted that the company has already been awarded the maximum punishment of termination from the membership by MCX and hence any further proceedings by SEBI will tantamount to parallel proceedings and lead to multiplicity of proceedings and thus the principles of estoppels would apply as far as civil consequences of the alleged violations are concerned and that the doctrine of double jeopardy as enshrined in the constitution of India would operate against any provisions of prosecution as against the Company and as such the findings and observations as recorded in SEBI show cause notice and enquiry report under reply are rendered infructuous.
9. With regard to the aforesaid contention of the Noticee, it is relevant to first note that in order for a person to be registered as a stock broker with SEBI, the Stock Broker Regulation *inter alia* requires that the applicant must first make an application for grant of a certificate of registration to be submitted to SEBI, in Form A of Schedule I of the Stock Broker Regulations, through the stock exchange of which it is admitted as a member. Further, Regulation 5 of the Stock Broker Regulations stipulates certain conditions while considering the application for grant of registration and in this regard, clause (a) states as under:

“Consideration of application for grant of registration.

5. The Board shall take into account for considering the grant of a certificate, all matters relating to trading, settling or dealing in securities and in particular the following, namely, whether the applicant,-

(a) is eligible to be admitted as a member of a stock exchange;

.....”

10. From the above, it is clear that in order for an applicant to seek grant of certificate of registration as a stock broker with SEBI, the applicant must first be a member of a stock exchange and such application will be submitted through the stock exchange of which the applicant is a member of. The membership of the Noticee with MCX is separate and distinct from the registration given by SEBI as stock broker. I note that the membership given by the stock exchange is a prerequisite to the registration given by SEBI. In view of the above, the contention of the Noticee that it has already been awarded punishment of termination from the membership by MCX and any further proceedings by SEBI will tantamount to parallel and multiplicity of proceedings is erroneous, as the membership granted by MCX and registration granted by SEBI are distinct requirements and provided by different authorities. The termination of membership of the Noticee with MCX does not automatically terminate the registration given by SEBI. SEBI must initiate its own and separate proceedings for cancelling the certificate of registration of the Noticee. Since, these are separate proceedings for different purposes, the contention of estoppel or double jeopardy by the Noticee is wholly erroneous and misplaced, and thus, untenable.

11. I note that it is a matter of record and not disputed by the Noticee that the Membership of the Noticee has been terminated by MCX with effect from November 09, 2020 and that the Noticee is at present, not a member of any recognized stock exchange. In this regard attention is drawn to Regulation 27 (i) and (ii) of Stock Brokers Regulations which reads as under:

“Liability for action under the Securities and Exchange Board of India (Intermediaries) Regulations, 2008

27. A stock broker shall be liable for any action as specified in Chapter V of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 including suspension or cancellation of his certificate of registration as a stock broker, if he—

- (i) ceases to be a member of a stock exchange; or
 - (ii) has been declared defaulter by a stock exchange and not re-admitted as a member within a period of six months; or
-”

12. From the above, it is clear that the membership given by the stock exchange is a prerequisite to the registration given by SEBI. I note that the Noticee is no longer a member of any stock exchange. The certificate of registration as stock broker has been granted to the Noticee subject to the conditions of registration provided under Regulation 5 of the Stock Brokers Regulation. In this regard, I note that under Regulation 5(a) of the Stock Brokers Regulations, one of the conditions of registration is that the applicant is eligible to be admitted as a member of a stock exchange through which it has made the application to SEBI. Since the membership of the Noticee has been terminated, the Noticee no longer fulfils the conditions stipulated under Regulation 5(a) of the Stock Brokers Regulations, by which the Certificate of Registration was granted to the Noticee. Accordingly, Regulation 27(i) and (ii) of Stock Brokers Regulations, as reproduced above, states that once a stock broker ceases to be a member of a stock exchange or has been declared defaulter by a stock exchange and not re-admitted as a member within a period of six months, the stock broker shall be liable for any action as specified in Chapter V of the Intermediaries Regulations, including suspension or cancellation of his certificate of registration as a stock broker.

13. In the present case, I note that the Designated Authority, after conducting an enquiry in the matter, has recommended that the certificate of the Noticee i.e., Kaynet Commodities Private Limited as Stock Broker with Registration no. INZ000042538 may be cancelled, as the Noticee is no longer a member of any Stock Exchange as a broker/ trading member. I also note from paras 3 to 5 above that the procedure as required for cancellation of registration as stipulated in the Intermediaries Regulations has been followed. In view of the above facts and circumstances, I agree with the above recommendations of the Designated

Authority in the Enquiry Report that the certificate of registration of the Noticee as a stock broker with Registration no. INZ000042538, be cancelled.

Directions

14. In view of the above, I, in exercise of the powers conferred upon me in terms of Section 12(3) read with Section 19 of the SEBI Act and Regulation 27 of the Intermediaries Regulations, hereby cancel the certificate of registration of Kaynet Commodities Private Limited as Stock Broker with Registration no. INZ000042538.
15. Irrespective of the cancellation of certificate of registration, the Noticee shall continue to be liable for anything done or omitted to be done by them as stock broker and shall continue to be responsible for payment of outstanding fees and dues and interest if any, due to SEBI.
16. Cancellation of Certificate of Registration, as directed in para 14 above, shall have the effects and obligations as given in Regulation 32(2) of Intermediaries Regulations, 2008.
17. This order comes into force with immediate effect.
18. A copy of this order shall be served on the Noticee and the Stock Exchanges and the Depositories to ensure necessary compliance.

Place: Mumbai

Date: January 30, 2023

Sd/-

SUJIT PRASAD

EXECUTIVE DIRECTOR

SECURITIES AND EXCHANGE BOARD OF INDIA